Supreme Court of the United States.

No. 267.—October Term, 1902.

George H. Mifflin et al., Appellants, vs. Benjamin F. Dutton et al. } Appeal from the United States Circuit Court of Appeals for the First Circuit.

[June 1, 1903.]

This was a bill in equity by the firm of Houghton, Mifflin & Co., assignees of the late Harriet Beecher Stowe, against the firm of Houghton & Dutton, for a violation of the copyright of the "Minister's Wooing," by Mrs. Stowe.

The "Minister's Wooing" appeared serially in the Atlantic Monthly during the year 1859. The contract between Mrs. Stowe and her publishers, Phillips, Sampson & Co., after reciting that Mrs. Stowe was the author and owned the copyright of and right to publish the book, gave to Phillips, Sampson & Co. "the sole and exclusive right to publish the same in this country." After the first twenty-nine chapters had appeared in the first ten numbers of the Atlantic Monthly for the year 1859, the author published the whole work in book form on October 15, 1859, and took proper steps to secure the copyright, notice of which was given in the name of Harriet Beecher Stowe. At the date of this publication the last thirteen chapters had not been elsewhere published, but subsequently appeared in the November and December numbers, which were copyrighted by Ticknor & Fields, to whom the Atlantic Monthly had been sold, and in accordance with an arrangement with Mrs. Stowe, by which the contract between her and Phillips, Sampson & Co. was assigned to Ticknor & Fields.

Upon this state of facts the Circuit Court dismissed the bill, and upon appeal to the Circuit Court of Appeals that court affirmed the decree. Both this and the preceding case were covered by the same opinion.

Mr. Justice Brown delivered the opinion of the Court.

As the first twenty-nine chapters of "The Minister's Wooing" appeared in the Atlantic Monthly before any steps whatever were taken, either by the publishers or by Mrs. Stowe, to obtain a copyright, it follows that they, at least, became public property.

Mrs. Stowe's copyright of the last thirteen chapters would doubtless have been valid but for the fact that they subsequently appeared in the November and December numbers of the Atlantic Monthly without notice of

such copyright. As we have already held that the copyright of the Atlantic Monthly by Ticknor & Fields did not operate as notice of the rights of the author to any article therein appearing, it follows from the case just decided that the appearance of the last thirteen chapters in the Atlantic Monthly vitiated the copyright under section five, which provides that no person shall be entitled to the benefit of the act unless he shall give information of his copyright by causing to be inserted in the several copies of each and every edition published during the term secured a notice of such copyright.

It is exceedingly unfortunate that, with the pains taken by the authors of these works to protect themselves against republication, they should have failed in accomplishing their object; but the right being purely statutory, we see no escape from the conclusion that, unless the substance as well as the form of the statute be disregarded, the right has been lost in both of these cases.

The decree in this case is also *Affirmed.*

True copy.

Test:

Clerk Supreme Court, U. S.